



# California Fair Political Practices Commission

March 2, 1989

Eric P. Gold  
1970 Broadway, Suite 940  
Oakland, CA 94612

Re: Your Request for Advice  
Our File No. A-89-054

Dear Mr. Gold:

You have requested advice concerning application of the conflict-of-interest provisions of the Political Reform Act (the "Act")<sup>1/</sup> to your duties as a member of the California Medical Assistance Commission ("CMAC"). The following advice is based upon the facts provided in your letter.

This letter is limited to the provisions of the Act and does not address any restrictions on your conduct as a result of Government Code Section 1090.

## QUESTION

Under the Act, must you disqualify yourself from participating in decisions regarding the East Bay Hospital's state Medi-Cal contract, if you provide legal services to East Bay Hospital?

## CONCLUSION

You must disqualify yourself from participating in a decision which will materially affect East Bay Hospital, a prospective client of your law firm, if East Bay Hospital has provided or has promised to provide you with \$250 or more in income during the 12 months prior to the decision.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

### FACTS

You are an attorney in private practice. You also serve as a commissioner of CMAC. CMAC, through its staff, conducts negotiations with hospitals by which the state contracts with the hospitals to provide services to Medi-Cal beneficiaries. The Commission votes on the contracts and amendments, hears presentations from hospitals unable to reach an agreement with staff negotiators, and determines the overall policies of the contracting program.

East Bay Hospital in Richmond participates in the state Medi-Cal contracting program. An employee of East Bay Hospital has requested that you provide the hospital with legal services on matters unrelated to CMAC or the state Medi-Cal contracting program.

### ANALYSIS

The Political Reform Act prohibits a public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. (Section 87100). A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his immediate family or on, among other things:

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(Section 87103(c).)

If you agree to represent East Bay Hospital in legal matters, East Bay Hospital will become a source of income to you. As sole owner of your law firm, if East Bay Hospital pays or promises you \$250 or more in gross income, the hospital will be a source of \$250 or more in income to you. (Section 82030(a).)

As a member of CMAC, you may be called upon to render decisions which involve East Bay Hospital. If you have received or have been promised \$250 or more in income from East Bay Hospital in the 12 months prior to a CMAC decision which would foreseeably and materially affect East Bay Hospital, you will be required to disqualify yourself from participating in the decision.

Since East Bay Hospital is involved in the state Medi-Cal contracting program, it is reasonably foreseeable that any CMAC decision involving the hospital's contract or participation in the program will affect the hospital. In order for an effect to be reasonably foreseeable, it must be more than a mere possibility; there must be a substantial probability. (In re Thorner (1975) 1 FPFC Ops. 198, at 203-206.)

We must next determine if the effect of the decision on East Bay Hospital is "material." Regulation 18702.1 (copy enclosed) contains guidelines for determining if the effect of a decision is material when an official's economic interest is directly involved in the decision. Pursuant to 18702.1(a)(1), the effect of a decision is material if:

(1) Any person (including a business entity) which has been a source of income (including gifts) to the official of \$250 or more in the preceding 12 months is directly involved in a decision before the official's agency.... (Emphasis added.)

If East Bay Hospital has paid you \$250 or more in the 12 months preceding a decision, there will be a material financial effect since East Bay Hospital will be directly involved in a decision before CMAC.

The disqualification requirement contained in Regulation 18702.1(a)(1) applies unless one of the exemptions listed in Regulation 18702.1(c) applies. However, it does not appear that any of the exemptions pertain to your situation.

Therefore, in accordance with the Act and regulations cited, we concur with your conclusion that you may provide East Bay Hospital with legal services, for which you receive payment, provided that you disqualify yourself from participating in or voting on any Commission decisions regarding East Bay Hospital's contract.

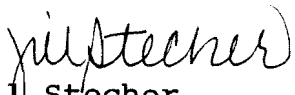
This letter does not address any restrictions on your conduct which may be imposed by other laws, such as Government Code Section 1090. Section 1090 provides additional restrictions on participation of government officials in contract decisions. We suggest that you seek advice from the Attorney General's office if you have any questions regarding Section 1090.

Eric P. Gold  
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If you have any further questions regarding this matter,  
please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

  
By: Jill Stecher  
Counsel, Legal Division

DMG:JS:plh

## CALIFORNIA MEDICAL ASSISTANCE COMMISSION

1121 L STREET, SUITE 300  
SACRAMENTO, CA 95814  
(916) 324-2726



JAN 30 10 53 AM '89

January 26, 1989

Ms. Lilly Spitz  
Counsel, Legal Division  
California Fair Political  
Practices Commission  
428 J Street, Suite 800  
P.O. Box 807  
Sacramento, CA 95804-0807

Re: Request for Advice

Dear Ms. Spitz:

In previous correspondence and conversations, the FPPC has provided advice regarding questions I have had arising out of my private practice of law and my duties as a member of the California Medical Assistance Commission ("CMAC"). In general, CMAC through its staff, conducts negotiations with hospitals by which the state contracts with the hospitals to provide services to Medi-Cal beneficiaries. The seven Commission members, of which I am one, vote on these contracts (and amendments), hear presentations from hospitals unable to reach agreement with the staff negotiators, and in general, determine the overall policies of the contracting program. A more detailed description of CMAC and its responsibilities is set forth in your letter of October 11, 1985, File No. A-85-206.

There are approximately 250 hospitals in the state which are participants in the contracting program. East Bay Hospital, a for profit institution located in Richmond, California, is one of these hospitals. Accordingly, any amendments or changes to East Bay's contract, including the reimbursement provisions, would be negotiated by the hospital and CMAC staff and approved by the Commission. (The statute creating CMAC actually only gives the Commission a right to disapprove what the staff Executive Director negotiates.)

A senior manager of one of my present law clients has recently become employed by East Bay Hospital. He has requested that I provide the hospital with legal services on matters unrelated to CMAC or the state Medi-Cal contracting program.

It is my understanding that consistent with FPPC rules and regulations, I may provide the hospital with said legal services, and receive payment for the same, provided that I disqualify myself from voting on or participating in the Commission's decision or action in respect to this hospital's contract.

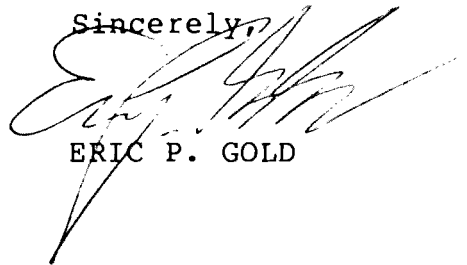
Ms. Lilly Spitz  
January 16, 1989  
Page 2

I request that if my understanding is correct, you confirm it, and if it is not correct, you provide me with appropriate advice.

If further information is required, please contact me at (415) 451-4114. Please send your response to me at 1970 Broadway, Suite 940, Oakland, California 94612

I thank you for your attention to this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Eric P. Gold", is written over the word "Sincerely,". The signature is stylized with a large, sweeping "E" and a long, horizontal stroke extending to the right.

ERIC P. GOLD

EPG:ca

CC: Michael Murray  
CMAC Executive Director

Byron Chell  
CMAC Legal Counsel

## CALIFORNIA MEDICAL ASSISTANCE COMMISSION

1121 L STREET, SUITE 300  
SACRAMENTO, CA 95814  
(916) 324-2726



Jan 27 8 53 AM '89

January 26, 1989

Ms. Lilly Spitz  
Counsel, Legal Division  
California Fair Political  
Practices Commission  
428 J Street, Suite 800  
P.O. Box 807  
Sacramento, CA 95804-0807

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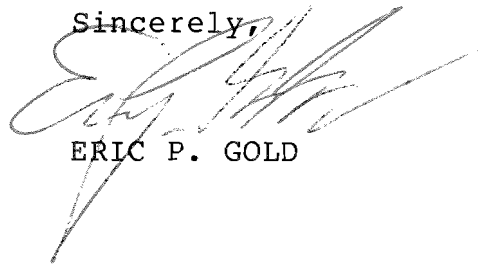
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ERIC P. GOLD

EPG:ca

CC: Michael Murray  
CMAC Executive Director

Byron Chell  
CMAC Legal Counsel





# California Fair Political Practices Commission

January 31, 1989

Eric P. Gold  
California Medical Assistance  
Commission  
1121 L Street, Suite 300  
Sacramento, CA 95814

Re: Letter No. 89-054

Dear Mr. Gold:

Your letter requesting advice under the Political Reform Act was received on January 30, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jill Stecher an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329.)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

*Diane M. Griffiths*  
Diane M. Griffiths  
General Counsel

DMG:plh